

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 9538

IN THE MATTER OF:

Served May 11, 2006

Investigation of Unauthorized)	Case No. MP-2004-164
Transfer of Certificate No. 85 and)	
Unauthorized Operations of JIMMIE)	
LEE DAVENPORT and JAMES L. HUGHES)	

This matter is before the Commission on respondents' response to Order No. 8283, served September 20, 2004, directing respondents to show cause why the Commission should not assess a civil forfeiture and/or suspend or revoke Certificate No. 85 for knowingly and willfully violating Article XI, Section 11, of the Compact.

I. BACKGROUND

On April 23, 2004, the Commission received a \$100 check in payment of the 2004 annual fee for V.I.P. Tours, Inc., WMATC No. 85. The check was drawn on the account of "VIP Tours LLC". Commission records identify Jimmie Lee Davenport and James L. Hughes as the sole shareholders and officers of V.I.P. Tours, Inc., and Mr. Hughes as the organizer of V.I.P. Tours, L.L.C.

On August 31, 2004, the Commission obtained records from the Taxpayer Services Division of the Maryland Department of Assessments and Taxation (MDAT), that show both V.I.P. Tours, Inc., and V.I.P. Tours, L.L.C., forfeited their charters on October 7, 2003. Under Maryland law, a corporation ceases to exist upon forfeiture of its charter, and all assets owned by a corporation at the time of forfeiture are transferred by operation of law to the corporation's directors.¹

Under Article XI, Section 11, of the Compact, Commission approval must be obtained to transfer a WMATC Certificate of Authority, and a person other than the person to whom an operating authority is issued by the Commission may not lease, rent, or otherwise use that operating authority.

Accordingly, Order No. 8283 gave respondents thirty days to show cause why the Commission should not assess a civil forfeiture for knowingly and willfully violating the certificate transfer provisions

¹ *Cloverfields Improvement Ass'n, Inc., v. Seabreeze Properties, Inc.*, 362 A.2d 675 (Md. Ct. Spec. App. 1976), aff'd, 373 A.2d 935 (Md. 1977).

of the Compact, and why Certificate No. 85 should not be suspended or revoked. The response deadline was extended twice at respondents' request.

II. RESPONSE

This is the second time that respondents have violated the certificate transfer provisions of the Compact by forfeiting the corporate charter of Carrier No. 85.² Respondents acknowledge that they have "gone down this road before." And as before, respondents have revived the charter of V.I.P. Tours, Inc.

The Maryland Corporations statute provides that upon revival: "If otherwise done within the scope of its charter, all contracts or other acts done in the name of the corporation while the charter was void are validated, and the corporation is liable for them."³ This is important. If respondents were acting in the name of the corporation while performing transportation during the period the charter was forfeited, then the WMATC Insurance Endorsement on file for Carrier No. 85 at that time would cover any liability resulting from injuries or property damage respondents might have caused in performing that transportation. Otherwise, it would appear not.

What evidence there is in the record on this issue is ambiguous. It is not clear on this record that respondents were acting in the name of the corporation when they paid the annual fee with a check in the name of the LLC. On the other hand, it is clear that they were satisfying an obligation arising under Certificate No. 85, which is held by the corporation. More evidence is needed to make a determination on the issue of the corporation's liability for respondents' acts while the charter was forfeit. Accordingly, respondents will be directed to present their vehicle(s) for inspection and produce records of their transportation operations in 2003 and 2004.

THEREFORE, IT IS ORDERED:

1. That within thirty days from the date of this order, respondents shall present for inspection any and all for-hire vehicles within respondents' possession, custody or control.

2. That within thirty days from the date of this order, respondents shall produce any and all books, papers, correspondence, memoranda, contracts, agreements, and other records and documents, including any and all stored electronically, that are within respondents' possession, custody or control and which relate to the

² See *In re V.I.P. Tours, Inc.*, No. MP-01-98, Order No. 6577 (Mar. 20, 2002).

³ MD. CORPS. & ASS'NS CODE § 3-512(1).

transportation of passengers for hire between points in the Metropolitan District during the period beginning January 1, 2003, and ending December 31, 2004, including, but not limited to any and all:

- a. customer contracts and invoices;
- b. invoices from other carriers;
- c. calendars and itineraries;
- d. correspondence;
- e. bank and payroll records;
- f. insurance documents;
- g. advertising materials; and
- h. income tax and personal property returns.

3. That Certificate of Authority No. 85 shall stand suspended and be subject to revocation without further proceeding upon respondents' failure to timely comply with this order.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS YATES, SMITH, AND CHRISTIE:



William S. Morrow, Jr.
Executive Director

